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 United States of America

UNITED STATES DISTRICT COURT  
 DISTRICT OF OREGON  
 PORTLAND DIVISION

STEVEN M. NELSON,	)	Case No.: 3:19-cv-01761-HZ
	)	
Plaintiff,	)	IN ADMIRALTY
vs.	)	
	)	
UNITED STATES OF AMERICA, by and	)	THE UNITED STATES' ANSWER TO
through the NATIONAL OCEANIC and	)	COMPLAINT
ATMOSPHERIC ADMINISTRATION,	)	
	)	
Defendant	)	
	)	

1 The Answer of the United States of America to the Complaint of STEVEN M. NELSON  
2 admits, denies, and alleges on information and belief as follows:

3 1. The United States denies the allegations pled in ¶ 1 of the Complaint for lack of  
4 knowledge and information.

5  
6 2. The United States of America admits and alleges that it is, and was at all times  
7 material to this action, a sovereign and that it has waived its sovereign immunity from suit and  
8 consents to be sued herein, if at all, only pursuant to the Public Vessels Act, 46 U.S.C. §§31101,  
9 *et seq.*, which incorporates consistent provisions of the Suits in Admiralty Act, 46 U.S.C. §§  
10 30901, *et seq.* The United States denies the remaining allegations pled in ¶ 2 of the Complaint for  
11 lack of knowledge and information.

12  
13 3. The United States denies the allegations pled in ¶ 3 of the Complaint for lack of  
14 knowledge and information.

15  
16 4. The United States denies the allegations pled in ¶ 4 of the Complaint for lack of  
17 knowledge and information.

18  
19 5. The United States denies the allegations pled in ¶ 5 of the Complaint, including  
20 sub-paragraphs 5(a)-5(c).

21 6. The United States denies the allegations pled in ¶ 6 of the Complaint.

22 7. The United States denies the allegations pled in ¶ 7 of the Complaint.

23 8. The United States denies the allegations pled in ¶ 8 of the Complaint.

24 9. The United States denies the allegations pled in ¶ 9 of the Complaint.

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1                                   **AS AND FOR A FIRST AFFIRMATIVE AND**  
2                                   **COMPLETE DEFENSE, THE UNITED STATES**  
3                                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
4

5           10.     Plaintiff's Complaint and action fail to state claims upon which relief can be  
6 granted.

7                                   **AS AND FOR A SECOND AFFIRMATIVE AND**  
8                                   **COMPLETE DEFENSE, THE UNITED STATES**  
9                                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
10

11           11.     If plaintiff sustained injuries and damages by reason of the matters alleged in the  
12 Complaint, which is denied, then said damages were caused in whole or in part by the acts of third  
13 parties and were not caused or contributed to in any manner by any actions or fault of the United  
14 States of America, its officers, agents, vessels, crew, servants, employees or others for whom it  
15 was responsible.  
16

17                                   **AS AND FOR A THIRD AFFIRMATIVE AND**  
18                                   **COMPLETE DEFENSE, THE UNITED STATES**  
19                                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
20

21           12.     If plaintiff sustained damages by reason of the matters alleged in the Complaint,  
22 which is denied, then said damages were caused in whole or in part by STEVEN M. NELSON's  
23 own actions and were not caused in any manner by any actions or fault of the United States of  
24 America, its officers, agents, vessels, crew, servants, employees or others for whom it was  
25 responsible.  
26

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28 //

1                   **AS AND FOR A FOURTH AFFIRMATIVE AND**  
2                   **COMPLETE DEFENSE, THE UNITED STATES**  
3                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
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5           13.     The Court lacks subject matter jurisdiction over plaintiff's Complaint and action.

6                   **AS AND FOR A FIFTH AFFIRMATIVE AND**  
7                   **COMPLETE DEFENSE, THE UNITED STATES**  
8                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
9

10          14.     The Court lacks subject matter jurisdiction over plaintiff's Complaint and action  
11 since said Complaint and action solely allege matters of discretionary functions and acts for which  
12 the United States of America has not waived sovereign immunity and consented to be sued.

13                   **AS AND FOR A SIXTH AFFIRMATIVE AND**  
14                   **COMPLETE DEFENSE, THE UNITED STATES**  
15                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
16

17          15.     The Court lacks subject matter jurisdiction over plaintiff's Complaint and action  
18 since said Complaint and action solely allege matters which are subject to the Constitutional  
19 doctrine of separation of powers for which the United States of America has not waived sovereign  
20 immunity and consented to be sued.

21                   **AS AND FOR A SEVENTH AFFIRMATIVE AND**  
22                   **COMPLETE DEFENSE, THE UNITED STATES**  
23                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
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25          16.     Plaintiff failed to mitigate his damages, which claims of damages and claims of  
26 liability upon which they are based are fully denied by the United States.  
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28     //

1                                   **AS AND FOR AN EIGHTH AFFIRMATIVE AND**  
2                                   **COMPLETE DEFENSE, THE UNITED STATES**  
3                                   **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
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5           17.    To the extent plaintiff seeks interest on his claims, which claims are denied,  
6 plaintiffs' prayer for interest would be subject to the provisions of the Public Vessels Act, 46  
7 U.S.C. § 31107, and not otherwise.

8                                   **AS AND FOR AN NINTH AFFIRMATIVE AND**  
9                                   **COMPLETE DEFENSE, THE UNITED STATES**  
10                                  **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
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12           18.    Any claims for attorney's fees are bared.

13                                  **AS AND FOR AN TENTH AFFIRMATIVE AND**  
14                                  **COMPLETE DEFENSE, THE UNITED STATES**  
15                                  **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS**  
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17           19.    Plaintiff is not entitled to a jury trial pursuant to Suits in Admiralty Act, 46 U.S.C.  
18 § 30903(b).

19           WHEREFORE, the United States of America prays as follows:

- 20           1.    That plaintiff's Complaint and action be dismissed with prejudice and with costs;  
21  
22           2.    The United States of America expressly reserves the right to amend this Answer  
23 and Cross-claim to add parties and/or causes of action, as may be necessary.

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1 Dated: February 20, 2020

BILLY J. WILLIAMS  
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RENATA GOWIE  
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Chief, Civil Division

5 JOSEPH H. HUNT  
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6 R. MICHAEL UNDERHILL  
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7 Torts Branch, Civil Division

8 s/ Eric Kaufman-Cohen  
9 ERIC KAUFMAN-COHEN  
Assistant Attorney in Charge  
10 West Coast Office  
11 Torts Branch, Civil Division  
12 U.S. Department of Justice

13 Attorneys for Defendant  
14 United States of America

CERTIFICATE OF SERVICE

I hereby certify that, on February 20, 2020, a true and correct copy of the foregoing THE UNITED STATES' ANSWER TO COMPLAINT was served electronically through CM/ECF on:

Charles Robinowitz  
Law Offices of Charles Robinowitz

Attorneys for Plaintiff  
Steven M. Nelson

/s/Eric Kaufman-Cohen  
ERIC KAUFMAN-COHEN